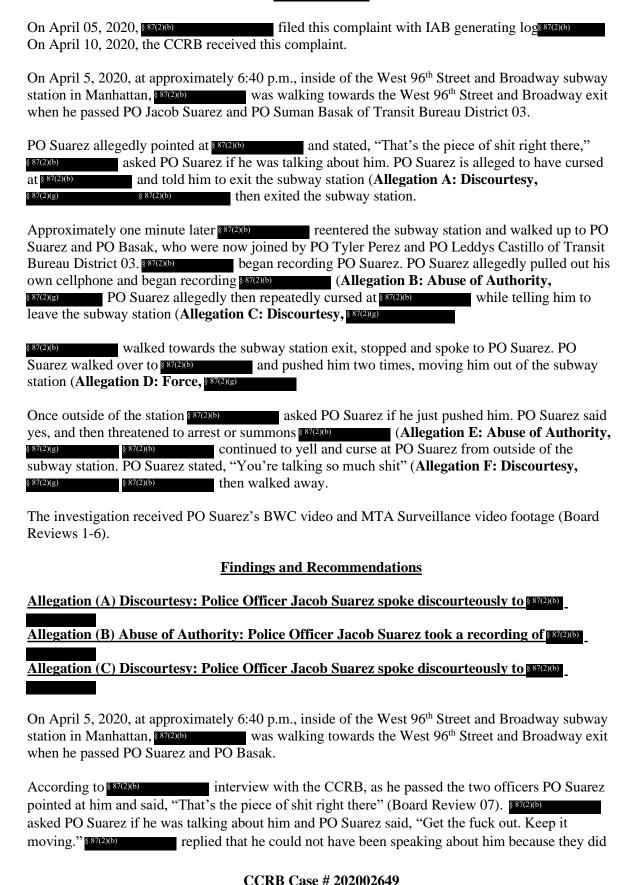
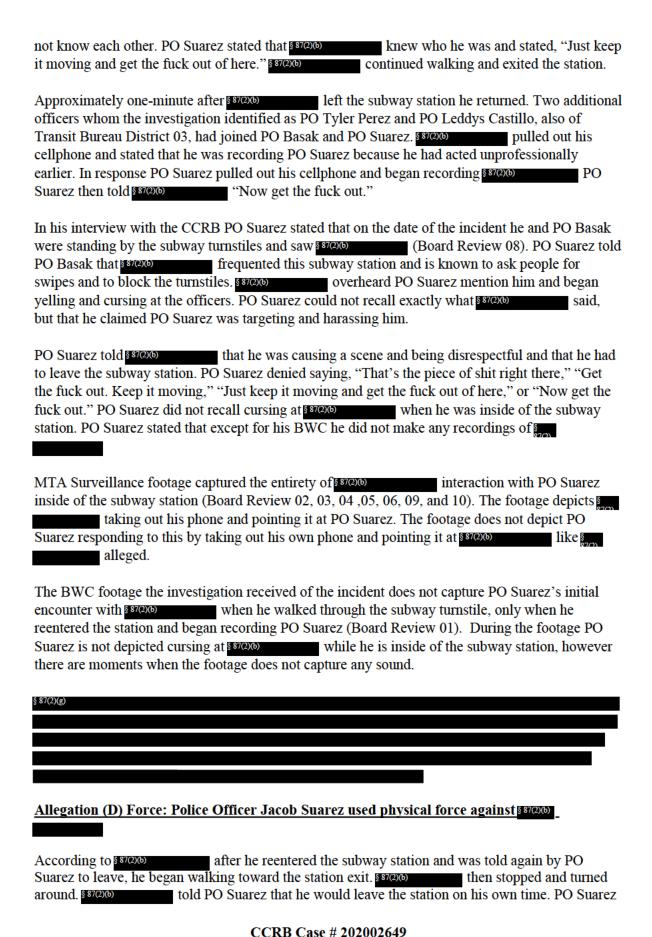
CCRB INVESTIGATIVE RECOMMENDATION

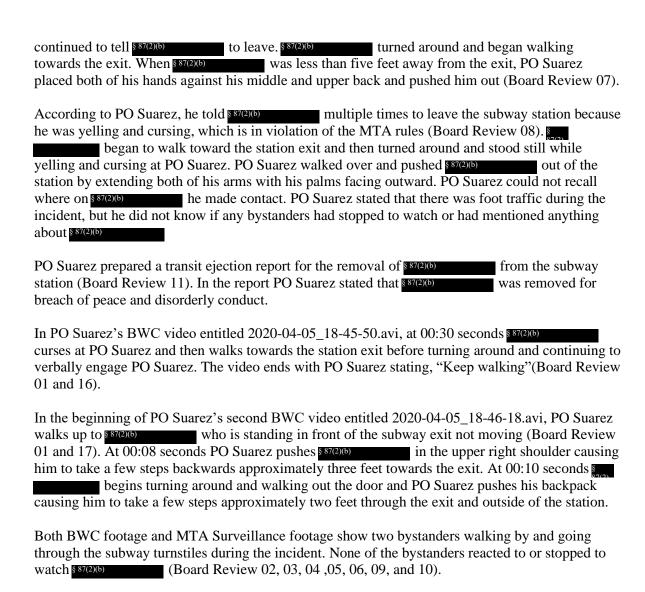
Investigator:		Team:	CCRB Case #:	✓ Force	• 🔽	Discourt.	U.S.
John Jeffrey		Squad #08	202002649	✓ Abus	e [] O.L.	☐ Injury
Incident Date(s)		Location of Incident:		Precin	et: 1	8 Mo. SOL	EO SOL
Sunday, 04/05/2020 6:40 PM		West 96th Street and B	Broadway	24		10/5/2021	5/4/2022
Date/Time CV Reported		CV Reported At:	How CV Reported:	Date/	Time Re	ceived at CC	RB
Sun, 04/05/2020 7:10 PM		IAB	Phone	Fri, 0	4/10/202	20 8:47 AM	
Complainant/Victim	Type	Home Addre	ess				
Subject Officer(s)	Shield	TaxID	Command				
1. POM Jacob Suarez	24230	933394	TB DT03				
Witness Officer(s)	Shield N	lo Tax No	Cmd Name				
1. POM Suman Basak	17208	967763	TB DT03				
2. POM Tyler Perez	29473	965408	TB DT03				
3. POF Leddys Castillo	14993	967803	TB DT03				
Officer(s)	Allegati	on			Investi	gator Recor	nmendation
A.POM Jacob Suarez		esy: Police Officer Jacob eously to \$87(2)(0)	b Suarez spoke				
B.POM Jacob Suarez	Abuse: F § 87(2)(b)	Police Officer Jacob Sua	rez took a recording	of			
C.POM Jacob Suarez		esy: Police Officer Jaco eously to §87(2)(6)	b Suarez spoke				
D.POM Jacob Suarez	Force: Peagainst	olice Officer Jacob Suar 87(2)(6)	ez used physical for	ce			
E.POM Jacob Suarez	Abuse: F	Police Officer Jacob Sua	rez threatened to arre	est			
F.POM Jacob Suarez		esy: Police Officer Jacob	b Suarez spoke				

Case Summary



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According to the MTA Rules of Conduct and Fines § 1050.7 Disorderly conduct, "No person on or in any facility or conveyance shall: (I) conduct themselves in any manner which may cause or tend to cause annoyance, alarm or inconvenience to a reasonable person or create a breach of the peace" (Board Review 14).

According to <u>People v. Baker</u>, 20 NY3D 354 (2013), the New York Court of Appeals ruled that a verbal exchange between a single civilian and officers does not constitute public harm if the civilian's statements are exclusively targeted at the officers, who are trained to defuse situations with emotionally distraught civilians (Board Review 29).

According to Patrol Guide Procedure 212-20 Ejection from New York City Transit Property officers are to "Use no more force than is necessary to effect the ejection, if passenger refuses to leave." The Patrol Guide clarifies that "Generally, grasping the upper arm and forearm to escort the person off the system is considered using reasonable force necessary to effect the ejection" (Board Review 15).

and PO Suarez's accounts of what led up to \$570,00 initial ejection were substantially different. While the MTA surveillance footage showed that \$570,00 appeared to approach the officers first, it's unclear what he was saying or how loudly he was speaking. However, even if \$570,00 was cursing at PO Suarez \$570,00 dispute with PO
Suarez did not cause a crowd to gather, impede pedestrian traffic, or generate any reactions from either of the two passing bystanders.
Allegation (E) Abuse of Authority: Police Officer Jacob Suarez threatened to arrest
Allegation (F) Discourtesy: Police Officer Jacob Suarez spoke discourteously to
According to serono after he was forced out of the subway station, PO Suarez stated, "My boss told me not to worry about you because you is a piece of shit. You ain't worth shit" (Boar Review 07). PO Suarez then stated, "Keep moving before I make it worse."
At 00:29 seconds PO Suarez's BWC video depicts asking PO Suarez if he put his hands on him (Board Review01, 16, and 17). PO Suarez replied, "Yep." seconds PO Suarez then called PO Suarez a coward and PO Suarez stated, "I could do so much more. At 00:56 seconds PO Suarez stated, "Get out of my face, you're talking so much shit" PO Suarez's BWC video does not depict him saying any other discourtesies.
In his interview with the CCRB PO Suarez identified himself as the person speaking in his BWC video (Board Review 08). PO Suarez stated that when he said, "I could do so much more," he was referring to the fact that he could have arrested or issued him a summons for disorderly conduct, because he was yelling, being loud, and being obnoxious. PO Suarez said there was nothing else \$37(2)(6) was doing that constituted disorderly conduct.
PO Suarez denied saying, "My boss told me not to worry about you because you is a piece of shit. You ain't worth shit." PO Suarez acknowledged saying, "Get out of my face, you're talking so much shit." When asked why he used the word "shit," PO Suarez stated that he used it because was talking a lot of nonsense.
PO Suarez's BWC video footage depicted cursing at PO Suarez before he was ejected from the subway station. (Board Review 01). Both BWC footage and MTA Surveillance footage show two bystanders walking by and going through the subway turnstiles during the incident, none of the bystanders reacted to or stopped to watch (Board Review 02, 03, 04, 05, 06, 09, and 10).

According to New York Penal Law Section 240.20 Disorderly Conduct, "A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or

recklessly creating a risk thereof:

- 1. He engages in fighting or in violent, tumultuous or threatening behavior; or
- 2. He makes unreasonable noise; or
- 3. In a public place, he uses abusive or obscene language, or makes an obscene gesture; or
- 4. Without lawful authority, he disturbs any lawful assembly or meeting of persons; or
- 5. He obstructs vehicular or pedestrian traffic; or
- 6. He congregates with other persons in a public place and refuses to comply with a lawful order of the police to disperse; or
- 7. He creates a hazardous or physically offensive condition by any act which serves no legitimate purpose" (Board Review 27).

According to <u>People v. Weaver</u> 16 N.Y.3d 123 the New York Court of Appeals ruled that, a person can only be guilty of disorderly conduct when a dispute they are having becomes "a potential or immediate public problem." The court stated that when, "assessing whether an act carries public ramifications, relevant factors to consider are the time and place of the episode under scrutiny; the nature and character of the conduct; the number of other people in the vicinity; whether they are drawn to the disturbance and, if so, the nature and number of those attracted; and any other relevant circumstances" (Board Review 18).

According to Patrol Guide Procedure 200-02 "the Department is committed to accomplishing its mission of protecting the lives and property of all citizens of New York City by treating every citizen with compassion, courtesy, professionalism, and respect, while efficiently rendering police services and enforcing the laws impartially." In other words, it is improper for officers say discourtesies to civilians (Board Review 12).

According to the Deputy Commissioner of Trial's ruling for case 2017-17276, NYPD police officers are permitted to use profanity in violent confrontations or sufficiently stressful encounters (Board Review 28).

§ 87(2)(b)	dispute with PO Suarez did not cause a crowd to gather, impede pedestria	ın
traffic, or genera	ate any reactions from either of the two passing bystanders. While \$87000	
was cursing and	yelling at PO Suarez, such behavior does not rise to the level of disorderly	conduct.
§ 87(2)(g)		

Civilian and Officer CCRB Histories

- PO Suarez has been a member of service for 17 years (Board Review 19). He has been a subject in seven CCRB complaints and 17 allegations, of which two were substantiated:
 - 201900280 involved substantiated allegations of discourtesy against PO Suarez.
 The Board recommended Formalized Training and the NYPD imposed Formalized Training.

•	§ 87(2)(b)	

•			
	rejected media	ation, Civil and Criminal Historical ation (Board Review 21). NYC Comptroller's office indicate garding this incident (Board Review).	tes that § 87(2)(b) has
	§ 86(1)(3)&(4)] [§ 87(2)(c)]	garding and merdent (Board Tevre	
Count No.	0		
Squad No.: Investigator:	John Jeffrey Signature	Inv. John Jeffrey Print Title & Name	
Squad Leader: _	Ethan De Angelo Signature	IM Ethan De Angelo Print Title & Name	3/2/2022 Date
Reviewer:	Signature	Print Title & Name	Date

○ § 87(2)(b)